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7 Attorneys for Defendants
8 DE LOITTE & TOUCHE LLP
DELOITTE TAX LLP

9
10 UNITED STATES DISTRICT COURT

11 NORTHERN DISTRICT OF CALIFORNIA

12 JAMES BRADY, TRAVIS CALL,
13 SARAH CAVANAGH, JULIA
LONGENECKER, PEDRO NOYOLA
14 and CHRISTOPHER SULIT,
individually and on behalf of all others
similarly situated,

15 Plaintiffs,

16 v.

17 DELOITTE & TOUCHE LLP, a limited
liability partnership; DELOITTE TAX
18 LLP; and DOES 1-10, inclusive,

19 Defendants.

20 } Case No. C-08-00177 SI
21 } The Honorable Susan Illston
22 } **REPLY IN SUPPORT OF
23 } MOTION TO TRANSFER**

24 } **Date: May 30, 2008**
25 } **Time: 9:00 a.m.**
26 } **Courtroom: 10**

1 **I. INTRODUCTION**

2 Plaintiffs' arguments in Opposition to Defendants' Motion to Transfer fail in
 3 light of the simple truth that both the Plaintiffs in *Mekhitarian* and *Brady* seek the
 4 same remedies on behalf of the same class members. Notwithstanding the
 5 inadmissible declaration of Plaintiffs' counsel, the *Mekhitarian* action has not been
 6 limited to cover only employees in the Lead Tax Services line. And, as can be
 7 seen from Plaintiffs' Opposition to Defendants' Motion for More Definite
 8 Statement, *Brady* has not been limited to cover only employees in Defendants'
 9 Global Employer Services ("GES") and Audit service lines. Based on the
 10 allegations in both the *Mekhitarian* and *Brady* complaints, these two actions
 11 contain nearly identical allegations on behalf of a large portion of the same
 12 putative class for which they seek the same relief.

13 Transferring the *Brady* matter to the Central District will promote the
 14 interests of justice, judicial economy, and will be in the interests of the parties and
 15 witnesses. Accordingly, Defendants request the Court grant the Motion to
 16 Transfer.

17 **II. THE MEKHITARIAN AND BRADY COMPLAINTS HAVE NOT
 18 BEEN LIMITED TO ENTIRELY DISTINCT EMPLOYEE GROUPS.**

19 In *Mekhitarian*, Plaintiffs allege a class action for unpaid overtime on behalf
 20 of all individuals who were employed by Defendants as Tax Associates and Tax
 21 Seniors in all tax service lines. In *Brady*, Plaintiffs seek unpaid overtime and
 22 compensation for unpaid meal and rest breaks on behalf of a putative class of "all
 23 salaried persons...[who] do accounting work but were not certified by the State of
 24 California in the practice of accounting." (FAC at ¶ 1). As the *Brady* Plaintiffs
 25 sue both Deloitte & Touche LLP and Deloitte Tax, the putative class seemingly
 26 includes Tax Associates and Tax Seniors who do "accounting work." Despite
 27 Plaintiffs' suggestion that they may agree "to amend their class definition to clarify
 28 that they are only seeking to represent a class of employees from Defendants'

1 Audit and GES practices,” they have not done so.¹ See Pls.’ Opp. at 4, footnote 3.
 2 In fact, Plaintiffs oppose Defendants’ Motion for More Definite Statement in
 3 which Defendants seek clarification of the scope of the putative class. See Pls.’
 4 Opp. to Motion for More Definite Statement. Moreover, Plaintiffs offer to “stay
 5 any Lead Tax component” in the *Brady* action pending the class certification
 6 decision in *Mekhitarian*. Pls.’ Opp. at p. 4, footnote 3.

7 Thus, contrary to Plaintiffs’ assertions, the *Mekhitarian* and *Brady* Plaintiffs
 8 seek to represent classes that substantially overlap. Accordingly, transferring the
 9 *Brady* action to the Central District will avoid conflicting judgments and promote
 10 judicial economy.

11 **III. DISCOVERY HAS NOT BEEN LIMITED TO LEAD TAX.**

12 Plaintiffs’ argument that transferring *Brady* to the Central District would
 13 “disrupt the schedule and/or would unfairly prejudice the rights of employees in
 14 this action whose rights have never been at issue in *Mekhitarian*” is without merit.
 15 (Opp. at p. 2, lines 6-8). Plaintiffs submit a declaration from Steven Elster that
 16 purports to describe the status of the *Mekhitarian* action. Not only is the
 17 declaration objectionable, but it contains inaccurate statements regarding the
 18 complaint and the parties’ discovery. The parties in that case have not limited
 19 written discovery to only the Lead Tax Services line, but have propounded and
 20 responded to discovery regarding Tax Associates and Tax Seniors in all service
 21 lines. See Declaration of Sheryl Skibbe at ¶ 2. Armond Marcarian, lead counsel in
 22 the *Mekhitarian* lawsuit, recently sent a letter and questionnaire soliciting
 23 information from employees who work or worked in all lines of Defendants’ tax

24
 25 ¹ Even assuming the *Brady* Plaintiffs limited their proposed class to include only
 26 employees who work in GES and Audit, this would not create mutually exclusive
 27 classes. Employees move between lines of serve, which means that there will be
 putative class members who have worked in both Lead Tax and GES and would be
 included within the proposed *Mekhitarian* and *Brady* class definitions.

1 practice, including GES. Skibbe Decl. at ¶ 3 and Exh. A. Moreover, the complaint
2 has not been amended and does not limit the class allegations to only Lead Tax.
3 Thus, whether Plaintiffs will seek to certify a class comprised solely of Tax
4 Associates and Tax Seniors in Lead Tax has not been established.

5 Transferring the *Brady* action to the Central District for assignment to a
6 single judge will serve the interests of justice by eliminating the risk of conflicting
7 orders and judgments from two District Courts and conserving the resources of the
8 parties and the Courts.

9 **IV. CONCLUSION**

10 The *Mekhitarian* and *Brady* putative classes substantially overlap. Even if
11 the *Brady* Plaintiffs amend their Complaint to limit their claims on behalf of Audit
12 and GES, the GES portion of their class still overlaps with *Mekhitarian*. Litigating
13 these cases in different courts would not be in the best interests of the class, the
14 parties, the witnesses, or judicial resources. Accordingly, Defendants respectfully
15 renew the request that this Court enter an order transferring the action to the United
16 States District Court for the Central District of California.

17

18 DATED: May 16, 2008

SEYFARTH SHAW LLP

19

20 By: 

21 Sheryl Skibbe

22 Attorneys for Defendants
DELOITTE & TOUCHE, LLP and
DELOITTE TAX, LLP

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Case No. C-08-00177 SI
The Honorable Susan Illston
**DECLARATION OF SHERYL
SKIBBE IN SUPPORT OF
MOTION TO TRANSFER**

Date: May 30, 2008
Time: 9:00 a.m.
Courtroom: 10

DECLARATION OF SHERYL SKIBBE

I, Sheryl Skibbe, declare as follows:

1. I am an attorney at Seyfarth Shaw LLP, attorneys of record for Defendants Deloitte Tax LLP and Deloitte & Touche LLP in this action and in the case, *Stepan Mekhitarian v. Deloitte & Touche (ICS) LLC and Deloitte Tax LLP*, Case No. CV-07-00412-DSF. I have personal knowledge of the facts stated in this declaration, acquired in the course of my representation of Defendants, and if called as a witness I could and would testify competently and truthfully to these facts.

2. The parties in the *Mekhitarian* case have not limited written discovery to only the Lead Tax Services line, but have propounded and responded to discovery regarding Tax Associates and Tax Seniors in all of Defendants' tax service lines.

3. Armond Marcarian, lead counsel in the *Mekhitarian* lawsuit, recently sent a letter and questionnaire soliciting information from employees who work or worked in all areas of tax. A copy of Marcarian's March 14, 2008 letter and questionnaire is attached hereto as Exhibit A. The letter has been redacted to protect the recipient's privacy.

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct and that this Declaration was executed this 16th day of May 2007, at Los Angeles, California.


Sheryl Skibbe

EXHIBIT A

MARCARIAN LAW FIRM

15260 Ventura Boulevard
Penthouse Suite 2250
Sherman Oaks, California 91403

Telephone: (818) 995-8787
Facsimile: (818) 995-8817

March 14, 2008

Re: Stepan Mekhitarian v. Deloitte & Touche et al.
United States District Court, Central District of California, Case No. CV07-0412 DSF (MANx)

Dear

We understand how precious your time is during this busy tax season. In fact, that is what the above-mentioned lawsuit is all about ... proper compensation for all the long hours you devoted to serving the needs of Deloitte and Touche LLP (or Deloitte Tax LLP) clients. HOWEVER, we need your response in order to move this lawsuit to the next level.

Several weeks ago we mailed you a copy of the enclosed questionnaire and a letter explaining the lawsuit. No doubt it's somewhere in your "To Do" pile, awaiting the end of the tax season. Unfortunately, the Court's schedule does not consider the tax season and we're quickly approaching a Court deadline. So, we're sending you another copy of the questionnaire.

PLEASE take a few minutes *today* to complete the questionnaire and return it in the enclosed postage-paid envelope. If the lawsuit is successful, these few minutes could be some of the most "profitable" minutes of your career.

In case our original letter found its way into your circular file, please visit <http://www.dtlawsuit.com> for complete details on the lawsuit. In fact, while you're there you can easily and quickly fill out the questionnaire ONLINE at: <http://www.dtlawsuit.com/form.html>.

Of course, if you have any questions about the case or the questionnaire, you are welcome to contact me at the above number or e-mail Armond@Marearianlaw.us. *Thank you in advance for sparing a precious few minutes today.*

Very truly yours,



Armond Mararian

REDACTED

Enclosures as stated

“TAX ASSOCIATE” and/or “TAX SENIOR” QUESTIONNAIRE

Save time – complete this questionnaire ONLINE at:
www.dtlawsuit.com/form.html

<p><i>Deloitte & Touche LLP and Deloitte Tax LLP</i></p>	
<p>The following questions concern your work for Deloitte & Touche LLP or Deloitte Tax LLP (“Deloitte”) as a “Tax Associate” or “Tax Senior” in California <u>at any time on or after December 1, 2002 through the present date</u>. Please mark all of the boxes that apply to you during the time you held or held the “Tax Associate or “Tax Senior” position.</p>	
<p>1. Are you currently employed by Deloitte & Touche LLP or Deloitte Tax LLP? (Please check one box below)</p>	
<p>YES <input type="checkbox"/> NO <input type="checkbox"/></p>	<p>2. Dates you were employed as a TAX ASSOCIATE: Start Date: _____ / _____ / _____ End Date: _____ / _____ / _____</p>
<p>Dates you were employed as a TAX SENIOR: Start Date: _____ / _____ / _____ End Date: _____ / _____ / _____</p>	
<p>3. Which California office of Deloitte did you work in?</p> <p>_____</p>	
<p>4. To which practice area were you assigned? (Check all that apply)</p> <p><input type="checkbox"/> Lead Tax Services <input type="checkbox"/> Multistate Tax <input type="checkbox"/> International Tax <input type="checkbox"/> Transfer Pricing <input type="checkbox"/> Global Employment Services <input type="checkbox"/> Tax Controversy Services <input type="checkbox"/> Tax Management & Advisory <input type="checkbox"/> Private Client Advisors <input type="checkbox"/> Property Tax <input type="checkbox"/> Washington National Tax <input type="checkbox"/> Tax CoSourcing <input type="checkbox"/> National Federal Tax Services <input type="checkbox"/> Mergers & Acquisitions <input type="checkbox"/> OTHER <p>_____</p> </p>	
<p>7. Did you keep accurate time records?</p> <p>YES <input type="checkbox"/> NO <input type="checkbox"/></p>	
<p>7(b) If so, do you still have copies in your possession?</p> <p>YES <input type="checkbox"/> NO <input type="checkbox"/></p>	
<p>8. As a Tax Associate or a Tax Senior, <i>did you:</i></p> <p>Give tax advice to clients? YES <input type="checkbox"/> NO <input type="checkbox"/></p> <p>Communicate with clients? YES <input type="checkbox"/> NO <input type="checkbox"/></p>	
<p>8(b) If you did communicate with clients, was it to obtain information necessary to prepare tax returns?</p> <p>YES <input type="checkbox"/> NO <input type="checkbox"/></p>	
<p>9. As a Tax Senior, <i>what percentage of your time</i> was spent reviewing Tax Associates' work?</p> <p>_____ %</p>	
<p>5. What percentage of the time were you able to take a <i>30-minute, duty-free meal break?</i></p> <p>_____ %</p>	
<p>6. While working at Deloitte, <u>how many hours do you/did you work per week, on average, as a Tax Associate or Tax Senior?</u> (Please check only one of the boxes to the right.)</p> <p>Over 70 hours per week: <input type="checkbox"/> # _____</p> <p>66-70 <input type="checkbox"/> 61-65 <input type="checkbox"/> 56-60 <input type="checkbox"/> 51-55 <input type="checkbox"/> 46-50 <input type="checkbox"/> 41-45 <input type="checkbox"/></p> <p>Although your hours may have varied please give us your best estimate averaging the weeks you worked the most hours, the weeks you worked the least hours, and the weeks in between. If you averaged over 70 hours per week or under 40 hours per week, please write in the number.</p> <p>40 hours (or less) per week: <input type="checkbox"/></p>	
<p>Please use the reverse for additional remarks or comments.</p>	
<p>10. Please briefly describe your duties in general categories and the % of time devoted to them (e.g. “preparing 1120s – 50%”) <u>Be sure to include BOTH CHARGEABLE and NON-CHARGEABLE hours actually worked.</u> <i>Your percentages should total 100%.</i></p>	
<p>11. If you would like to be added to the Plaintiffs’ listserv to receive email updates on the lawsuit, please print your email address:</p> <p>NAME: _____</p>	
<p>12. Please print your name, sign, and date below: NAME: _____ SIGNATURE: _____ DATE: _____</p>	
<p>12(b) Would you be willing to sign a <u>formal</u> declaration regarding your experiences?</p> <p>YES <input type="checkbox"/> NO <input type="checkbox"/></p>	
<p>13. If you are willing to speak with us further, please provide your telephone number and the best time to call:</p>	